

REMARKS

Summary of Office Action

Claims 1-38 are pending in this application.

The Examiner rejected claims 1-38 under 35 U.S.C. § 103(a) as being obvious from Hendricks U.S. Patent Application Publication No. 2005/0157217 (hereinafter "Hendricks").

Rejections of Claims 1-38 Under 35 U.S.C. § 103(a)

Claims 1-38 were rejected under 35 U.S.C. § 103(a) as being obvious from Hendricks.

These rejections are respectfully traversed.

Applicants claim video-on-demand (VOD) services and methods of operating VOD services that are accessible by subscribers and non-subscribers of those services. In particular, non-subscribers may select from a list and view segments/previews of full-length video programs, but not the full-length programs themselves, which only subscribers may view.

The Examiner asserted that Hendricks discloses "a method of operating a video-on-demand (VOD) service ... accessible to subscribers and non-subscribers of the service" (Office Action, page 2; emphasis added).

This assertion is baseless for the reasons discussed in applicants' previous reply to Office Action. In particular, Hendricks' does not disclose or suggest that its VOD service is accessible to non-subscribers.

The Examiner also asserted that Hendricks discloses "a video-on-demand (VOD) service comprising: ... [a] multiple processor computer ... that allows the list and previews ... to be transmitted to subscribers and non-subscribers of that service" (Office Action, page 5; emphasis added).

This assertion is also baseless. Hendricks does not disclose or suggest that its VOD service has a multiple processor computer that allows previews to be transmitted to non-subscribers of that service.

The Examiner then acknowledged that Hendricks "is silent as to specific use of the phrase 'non-subscriber' in the disclosure."

Indeed, Hendricks is not only silent as to any "specific" use of the phrase "non-subscriber," but is completely silent as to ANY use of the phrase "non-subscriber" – either general, specific, or otherwise – because Hendricks' system is very plainly directed to ONLY subscribers (see applicants' previous reply to Office Action).

The Examiner then concluded that "it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the system of Hendricks with the phrase 'non-subscriber(s)' to distinguish between subscribers and non-subscribers and permit non-subscriber(s) to instantly subscribe to program(s)/channel(s) as taught by Hendricks" (emphasis added).

This conclusion is completely baseless.

No evidence whatsoever has been cited by the Examiner to support such a conclusion.

"The Federal Circuit has stated that 'rejections on obviousness cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.'" MPEP § 2142.

Furthermore, "[w]ith regard to rejections under 35 U.S.C. 103, the examiner must provide evidence which as a whole shows that the legal determination sought to be proved (i.e., the reference teachings establish a *prima facie* case of obviousness) is more probable than not." MPEP § 2142; emphasis added.

Accordingly, the Examiner has not produced a *prima facie* case of obviousness and "the applicant is under no obligation to submit evidence of nonobviousness" MPEP § 2142.

Notwithstanding the above, applicants submit that Hendricks teaches away from the modification proffered by the Examiner.

In particular, Hendricks only allows subscribers in good standing to order and view programs or channels in its program delivery system:

"When a subscriber orders a program or channel ... controller 214 checks the subscriber's account for good standing and then authorizes the access by signaling the set top terminal 220" (*id.* at lines 7-10; emphasis added).

Hendricks therefore teaches that only a subscriber whose account is in good standing can order and view programs or channels, thus teaching away from allowing non-subscribers -- who inherently have no account, much less an account in good standing -- to instantly order and view programs or channels.

Hendricks accordingly teaches away from allowing non-subscribers to instantly subscribe to program(s)/channel(s) -- and the Examiner has cited nothing to rebut that teaching.

Moreover, the Examiner's proffered modification of Hendricks' system does not result in applicants' invention.

None of applicants' independent claims requires a non-subscriber to be able "to instantly subscribe to program(s)/channel(s)."

Applicants' independent claims 1, 10, 16, 19, and 36 each define a method of operating a video-on-demand ("VOD") service that is accessible to non-subscribers of that service. The methods include transmitting or displaying a segment or preview of a video program selected by the non-subscriber, but not transmitting/displaying a full-length video program selected by the non-subscriber.

Similarly, independent claims 7, 14, and 21 each define a VOD service in which previews can be selected by and transmitted to non-subscribers of the service, but full-length video programs can only be transmitted to subscribers of the service.

Thus, even if a rational basis for modifying Hendricks' system as proffered by the Examiner were cited, applicants' claims would still not be obvious from such a modified system, because there would be no difference between a subscriber and a non-subscriber who can "instantly subscribe to program(s)/channel(s)." Applicants' invention, in contrast, distinguishes between subscribers and non-subscribers.

In sum, Hendricks does not in any way render obvious applicants' invention as defined in independent claims 1, 7, 10, 14, 16, 19, 21, and 36.

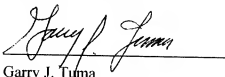
For at least these reasons, dependent claims 2-6, 8, 9, 11-13, 15, 17, 18, 20, 22-35, 37, and 38, which depend directly or indirectly from the independent claims, are also not obvious from Hendricks (i.e., dependent claims are patentable if their independent claim is patentable).

Accordingly, applicants respectfully request that the rejections of claims 1-38 under 35 U.S.C. § 103(a) be withdrawn.

Conclusion

The foregoing demonstrates that claims 1-38 are allowable. This application is therefore in condition for allowance. Reconsideration and allowance are accordingly respectfully requested.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Garry J. Tuma", is written over a horizontal line.

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